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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12 SPOKANE DIVISION

13 LONNIE TOFSRUD, an individual,
14 Plaintiff,

15 vs.

16 SPOKANE POLICE DEPARTMENT, a
17 political division of City of Spokane,
18 CRAIG MEIDL, in his personal and
19 official capacity, JUSTIN LUNDGREN,
20 in his personal and official capacity, and
21 DAVE STABEN, in his personal and
22 official capacity,

23 Defendants.

Case No. 2:19-cv-00371

COMPLAINT FOR DAMAGES

Violations of 42 U.S.C. § 1983, 14th
Amendment Due Process, Equal
Protection, 1st Amendment Retaliation,
Outrage, and Defamation

42 U.S.C. § 1983, supplemental state
common law claims

Damages at least \$2,000,000 or an
amount to be proven at trial

DEMAND FOR JURY TRIAL

COMPLAINT

24 Plaintiff Lonnie Tofsrud ("Plaintiff"), by and through his attorneys, Thenell
25 Law Group, P.C., brings this Complaint herein and states and alleges as follows:
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INTRODUCTORY STATEMENT

1. This action is filed by Plaintiff under 42 USC § 1983 and it seeks monetary damages and injunctive relief for violations of the Plaintiff's Fourteenth Amendment due process and equal protection, unlawful retaliation for First Amendment free speech, and state law claims of outrage, and defamation by Defendants Spokane Police Department, Chief Craig Meidl, Assistant-Chief Justin Lundgren, and Lieutenant Dave Staben.
2. Defendants, except as noted herein, at all times material were acting in their official capacities. Defendants, acting under color of law, have deprived Plaintiff of due process and equal protection of law, retaliation for exercise of free speech, and injured Plaintiff under state law by retaliating against Plaintiff's exercise of free speech on a matter of public concern, by depriving Plaintiff of property interests without due process, by treating Plaintiff differently than similarly situated persons without rational basis, by defaming Plaintiff and committing outrage upon him and by conspiring with each other in furtherance of the above violations.

JURISDICTION AND VENUE

3. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, federal question jurisdiction, 28 U.S.C. § 1343, civil rights jurisdiction, for violations of the

1 Constitution, as actionable under 42 U.S.C. § 1983. Specifically, Plaintiff alleges
2 that Defendants have violated and continues to violate his rights to procedural due
3 process and equal protection under the Fourteenth Amendment to the United
4 States Constitution and his liberty and association interests under the First
5 Amendment.
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8 4. Venue is proper under 28 U.S.C. § 1391(b), as Defendants reside in the Eastern
9 District of Washington and Plaintiff's claims for relief arose in this district.

10 **PARTIES**

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12 5. Plaintiff is a resident of Spokane County, Washington, and is employed by the
13 Spokane Police Department ("SPD"), a department within the City of Spokane
14 (the "City").
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16 6. The SPD is a public body liable for the tortious conduct of its agents and
17 employees pursuant to RCW 4.96.020. The SPD is sued for damages.
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19 7. Craig Meidl ("Meidl" or "Chief Meidl") is the Chief of Police for the SPD.
20 Defendant Meidl represents SPD in his capacity as its Chief. Defendant Meidl is
21 the final policy maker for SPD with regard to all matters related to the Plaintiff's
22 employment. Defendant Meidl is sued herein in his official capacity and as an
23 individual.
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25 8. Justin Lundgren ("Lundgren" or "Assistant Chief Lundgren") is the Assistant
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1 Chief of Police for the SPD. Defendant Lundgren is sued herein in his official
2 capacity and as an individual.

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4 9. Dave Staben (“Staben”) is a Lieutenant in the SPD. Defendant Staben is sued
5 herein in his official capacity and as an individual.

6
7 **FACTUAL BACKGROUND**

8 10. Plaintiff has been a valued employee of the Spokane Police Department for the
9 past 28 years. Plaintiff was promoted to the rank of Detective in 1999. Plaintiff’s
10 abilities and work ethic are memorialized in performance reviews,
11 accommodations as well opinions submitted in the form of written and verbal
12 commendations. Plaintiff was assigned to the Targeted Crimes Unit (TCU) in
13 approximately 2003. Plaintiff left the TCU for approximately three years before
14 returning to the TCU in 2009 where he has worked until the events described
15 herein.
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17
18 11. The Major Crimes unit of the Spokane Police Department is charged with
19 investigating serious felonies including, but not limited to, homicides, serious
20 assaults, and robberies. The detectives assigned to this unit are also responsible
21 for the investigation of critical events involving police officers. This is a coveted
22 position within the investigative division and offers many incentives including,
23 but not limited to, training, overtime opportunities, and equipment. Plaintiff was
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1 actively recruited to join Major Crimes prior to the events described herein. Once
2 the Defendants initiated the retaliatory investigations into the Plaintiff, as
3 described herein, the Plaintiff was no longer considered for any of the several open
4 positions in the Major Crimes unit.
5

6 12. The Targeted Crimes Unit has had a longstanding working relationship with the
7 ATF. The two entities have engaged in several joint criminal investigations both
8 in the state and federal arena. Plaintiff has been identified as the informal leader
9 of TCU as well as an informal task force officer. There has been a memo of
10 understanding wherein the ATF would reimburse the SPD for overtime incurred
11 by detectives working with the ATF. This relationship was also memorialized in
12 an email from Staben. Plaintiff had been the lead investigator in a vast majority
13 of the joint investigations with the ATF.
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17 13. In 2016 Plaintiff and ATF Special Agent Julius began utilizing a specific
18 confidential informant (the CI) to facilitate criminal investigations related to the
19 trafficking of firearms and narcotics. The two initiated several investigations that
20 led to the arrest and convictions of many people involved in criminal activity in
21 and around the greater Spokane area. Subjects were often career offenders with
22 criminal histories including violent offenses. The obvious primary effect of the
23 investigations was the eventual incarceration of people involved in a wide array
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1 of criminal law violations, not just the firearms violations. A secondary effect
2 was the disruption of criminal groups.
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4 14. Joint efforts between TCU and ATF were designed to disrupt and address the flow
5 of firearms into the hands of career offenders. Cases decided by the Supreme
6 Court, including *Arizona v Gant* (2009), limited the ability for patrol officers to
7 search vehicles incident to arrest. The TCU/ATF task force was utilizing CIs to
8 perform controlled buys to both facilitate seizure of the illegal firearms as well as
9 arrest the serial offenders responsible for the flow of weapons.
10

11 15. On November 6, 2017, SPD officers Corporal McCullough and Sergeant Vigessa
12 contacted and arrested Tofsrud's and Julius's CI. The CI was charged and was
13 being held in custody. Sergeant Vigessa contacted Plaintiff and made him aware
14 of the arrest. Plaintiff later reviewed the written arrest report and accompanying
15 documents. Plaintiff was familiar with the work of both McCullough and Vigessa
16 in past incidents and made certain to review the unit history and the official reports
17 filed by McCullough and Vigessa in this incident. Plaintiff noted discrepancies
18 between the official report and the notes McCullough had entered in the unit
19 history or CAD.
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21 16. On December 27, 2017, Plaintiff called McCullough, urging him to address the
22 discrepancies. Plaintiff was concerned that these discrepancies would cause
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1 problems for the prosecutor's office due to *Brady* disclosure implications.
2 Specifically, the CAD or unit history is a discoverable document and any criminal
3 defense attorney would immediately note the facts and details present in the unit
4 history or CAD report which were absent or modified in the official police report
5 of the arrest. Plaintiff advised McCullough that he would be contacting the
6 prosecutor's office the following day for guidance. By contacting McCullough
7 directly, Plaintiff was attempting to address the matter at the lowest possible level
8 without escalation.
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12 17. On December 28, 2017, Plaintiff contacted Eugene Cruz, a prosecutor at the
13 Spokane County Prosecutor's Office. Plaintiff discussed the discrepancies in
14 McCullough's report and provided Cruz with the report and the CAD notes or unit
15 history notes. The document provided by Plaintiff came directly from
16 McCullough, were his authorship, or his unit history.
17

18 18. Cruz communicated Plaintiff's concerns to Jack Driscoll ("Driscoll"), the chief
19 criminal prosecutor at that time, and Mark Cipolla ("Cipolla"). The prosecutor's
20 office decided to dismiss the case against the CI arrested by McCullough and
21 Vigessa. Driscoll also contacted Lieutenant Stevens who oversaw the SPD
22 internal affairs unit regarding possible misconduct by McCullough. It was the
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1 policy of the SCPO to refer allegations of officer misconduct to the internal
2 investigations unit in the subject agency.

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4 19. Instead of promptly opening an investigation into McCullough, Stevens contacted
5 Lt. Staben, who was McCullough's and Plaintiff's superior officer. Staben took
6 the case over from Stevens. Staben opened two internal affairs investigations, one
7 into Plaintiff ("Tofsrud IA") and a pretextual investigation into McCullough
8 ("McCullough IA"). Plaintiff believes the McCullough IA was pretextual because
9 of the numbers assigned to the two IAs. The policy pattern and practice of the
10 SPD is to number each IA when it is opened in a sequential fashion with a prefix
11 designating the year, e.g. yy-xxx. Here the IA number associated with the
12 McCullough IA was 18-003 while the IA number associated with the Tofsrud IA
13 was 18-002. Later both IAs were merged into 18-002 to obscure the fact that
14 Staben opened the first investigation into Tofsrud, who had reported potential
15 misconduct.
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19 20. The Assignment History associated with IA 18-002 notes Stevens assigned the
20 incident to Staben on January 15, 2018. Staben attached McCullough's unit
21 history and officer reports that same day. Also, on January 15, 2018, Staben added
22 Tofsrud to the IA as well as his Sergeant Preuniger, Plaintiff's sergeant, who was
23 investigated for allowing Plaintiff to take his complaint to Cruz outside the chain
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1 of command. McCullough was not added to IA 18-002 until February 8, 2018, on
2 or about the time McCullough's IA was merged into Tofsrud's. Staben initially
3 attempted to interview Plaintiff on January 16, 2018, telling him he was merely a
4 witness in an IA into McCullough. Staben refused to allow Plaintiff to bring a
5 legal representative with him, again telling him he was merely a witness. Staben
6 further told Plaintiff the interview must happen that day to accommodate the
7 attendance of the ombudsman, Bart Logue. Plaintiff was suspicious of this request
8 because it was the policy of the SPD to include the ombudsman only for
9 investigations which originated by citizen complaint, not internally. Plaintiff
10 declined to be interviewed on that day.

14 21. Staben interviewed Detective James Erickson on January 16, 2018. Erickson
15 worked with Plaintiff in the TCU. Staben used deceptive interrogation techniques
16 to elicit a statement from Erickson that Plaintiff used the word "lie" or "lied" when
17 reporting the discrepancies to Cruz. This is contrary to the nature of the referral
18 Plaintiff made but became the basis for the allegations which Defendants
19 conspired to sustain against Plaintiff. Police Guild Vice President Kris Honacker
20 was present for Erickson's interview. Upon learning of the Erickson interview and
21 Staben's focus on Plaintiff, Plaintiff also elicited the support of the union and
22 Honacker.
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1 22.Plaintiff and Honacker met with Assistant Chief Lundgren. Plaintiff and Honacker
2 apprised Lundgren of the chain of events and Lundgren opined the investigation
3 should not have been opened by Staben at the shift level due to the obvious *Brady*
4 Implications. Lundgren relieved Staben of the investigation and it was transferred
5 back to Stevens on January 17, 2018; it was then assigned to Sergeant Michael
6 Carr and Sergeant Daniel Waters who handled the bulk of the investigation. It was
7 Carr who later informed Plaintiff that the two IAs had been merged into one.
8

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10 23.Despite being relieved of the investigation, Staben continued to insert himself in
11 the investigation process. This interference continued throughout the entire
12 process of the investigation, analysis, ultimate finding and grievance to reconsider
13 the findings. Even if he did not engage in this improper interference, Staben had
14 already tainted the focus of the investigation by turning it towards the Plaintiff,
15 who reported the potential misconduct, and away from McCullough, the potential
16 malfeasant.
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20 24.Plaintiff also brought his concerns over the handling of the IAs and Staben
21 treatment of Plaintiff to the City's HR department. Plaintiff and Honacker had a
22 discussion with Jennifer Jackson of human resources. Jackson was given the same
23 information as Lundgren. She was also made aware of inappropriate behavior
24 exhibited by Lieutenant Staben.
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1 25. On March 22, 2018, Sergeant Carr interviewed Plaintiff. Plaintiff was read his
2 administrative rights, which included in part, that Plaintiff was being compelled
3 to answer questions truthfully and honestly. Plaintiff at all times answered
4 questions truthfully.
5

6 26. In May of 2018, an administrative review panel concluded that Plaintiff had
7 violated several policies. The most damning being SPD Policy 340.3.5 (f)
8 “Knowingly making false, misleading or malicious statements that are reasonably
9 calculated to harm or destroy the reputation, authority or official standing of the
10 Department or members thereof.” The statements alleged to be false were
11 Plaintiff’s allegation against McCullough and Vigessa. None of Plaintiff’s
12 allegations were proven false. McCullough’s report did in fact contain
13 inconsistencies and the other officers involved in the arrest did in fact make
14 statements which conflicted with the evidence. None of the statements Plaintiff
15 made prior to, or during the IA, were proven to be false.
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20 27. On June 22, 2018, Chief Meidl authored a letter of reprimand outlining the policy
21 violations committed by Plaintiff. The letter noted additional statements made by
22 Plaintiff. The letter was presented to Plaintiff by Major Eric Olson. During that
23 conversation, Olson indicated that he had requested a portion of the letter be
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1 changed in an effort to lessen the chances that Plaintiff would be implicated by
2 the *Brady v Maryland* requirements of the prosecutor's office.

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4 28. On July 24, 2018, Plaintiff submitted a letter of rebuttal addressing the IA
5 investigation, the analysis, the eventual finding of the administrative review panel,
6 and the subsequent letter of reprimand. Plaintiff enlisted the assistance of his
7 attorney, Christian Phelps, in preparing that document. The document gave a clear
8 and concise explanation of the chain of events. Plaintiff had provided a list of
9 witnesses who could elucidate the matter further; none of those witnesses were
10 interviewed during the course of this investigation, nor were they interviewed
11 after the rebuttal. Plaintiff did not receive any response from the Chief's office
12 other than an email indicating that the letter had been received and then it would
13 be read.
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17 29. On September 21, 2018, the Spokane Police Guild president, John Griffin,
18 submitted a letter to Chief Meidl asking him to reconsider the letter of reprimand
19 as issued to Plaintiff. Griffin also met with members of the administrative review
20 panel and plead the case. The chief declined to reconsider the letter and its
21 language. This step exhausted Plaintiff's administrative options to address this
22 miscarriage of justice.
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1 30. Contemporaneously with the events described herein, Chief Meidl presented a
2 document to members of the Spokane Police Department. The document was
3 entitled "Highlights of the collaborative reform process in the Spokane Police
4 Department". Chief Meidl worked with community stakeholders on this
5 document, including a prominent citizen of color named James Wilbourn. Mr.
6 Wilbourn was quoted in the document as saying "In order to gain trust with the
7 community, the community wants to be sure that officers will report misconduct
8 by other officers. Failure of officers to hold their peers who engage in misconduct
9 accountable soils the reputation of all officers". This was precisely the ethic that
10 Plaintiff attempted to adhere to by reporting the factual discrepancy in
11 McCullough's report.
12

13 31. On August 29, 2018 Plaintiff was contacted by two of his peers who told him chief
14 criminal deputy Cipolla had been publicly stating that Plaintiff would be identified
15 as a *Brady* officer. On August 30, 2018, Plaintiff was contacted directly by
16 Cipolla, who requested a meeting. Honaker accompanied Plaintiff to Cipolla's
17 office. Plaintiff was served with a potential impeachment disclosure ("PID")
18 letter. During the conversation, Cipolla indicated that the letter was the sole result
19 of the finding by chief Meidl. Cipolla also indicated that he felt the investigation
20 was agenda driven and poorly executed. Cipolla had previously told Plaintiff and
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1 other witnesses that a member of the Spokane Police Department administration
2 had contacted the prosecutor's office in an effort to secure the decision to
3 designate Plaintiff as a *Brady* officer. Cipolla refused to elaborate on that issue in
4 front of Honaker. Plaintiff believes the SPD Defendants conspired to create a
5 Brady issue related to Plaintiff. Plaintiff further believes Cipolla was aware of this
6 conspiracy and nevertheless issued the PID letter.
7
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9 32. Plaintiff's attorney, Mr. Phelps, attempted to intervene with the elected
10 prosecutor, Larry Haskell. Phelps was unable to get Haskell to reverse his office's
11 decision to designate Plaintiff a Brady officer despite evidence the office had acted
12 in violation of their own written policy guidelines.
13

14 33. On May 4, 2018, Plaintiff filed a discrimination/harassment complaint with
15 Spokane City human resources. The complaint outlined specific behavior
16 demonstrated by Lieutenant Staben. During the pendency of the complaint being
17 investigated Plaintiff was warned by his chain of command about contacting
18 possible witnesses that could substantiate his allegations. Plaintiff is unaware of
19 any policy that prohibits a victim of discrimination/harassment from identifying
20 possible witnesses and having contact with them. Plaintiff believes this direction
21 is further evidence of retaliation and prevented many helpful witnesses from
22 coming forward on Plaintiff's behalf.
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1 34.Plaintiff was advised the human resources complaint would not be investigated
2 until after the IA had been completed. Plaintiff was told this would help protect
3 the integrity of the IA. Plaintiff has cause to believe the investigations were not
4 kept separate and were used to accomplish the same unlawful purpose, that being
5 to punish Plaintiff for his reporting of potential misconduct while protecting the
6 City, the SPD and the individual defendants.
7

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9 35.During the pendency of the HR complaint, Lieutenant Staben made contact with
10 a subordinate (Tom Michaud) and discussed the complaint with him. Michaud
11 was so concerned about this discussion that he reported it to human resources.
12

13 36.Carr confronted Plaintiff during Plaintiff's shift regarding the HR complaint. Carr
14 also admitted to other violations of IA policy by disclosing details of the
15 investigation to others. Carr and Staben were familiar with IA policies and knew
16 or should have known their actions violated those policies. Following this
17 confrontation with Carr, Plaintiff became concerned and contacted Jennifer
18 Jackson and Christine Kavanaugh of human resources to ask for specific
19 protections.
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22 37.On November 20, 2018, Jennifer Jackson submitted a final report regarding the
23 human resources complaint initiated by Plaintiff. The report was lacking crucial
24 information and appeared to be a complaint and investigation of Plaintiff. The
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1 report contained witness statements solicited by Jackson and Jacqui MacConnell
2 director of SPD internal affairs. The witnesses appear to have been curated to
3 protect Chief Meidl, Lt. Staben, and other members of the SPD executive staff.
4 The report did not include any witness interviews with Plaintiff's peers or
5 coworkers. Plaintiff and his attorneys submitted a response to the report pointing
6 out the obvious inadequacies of the investigation and those conducting it. There
7 have been no attempts to rectify the clear mistakes made by the investigators.
8

9
10 38. The City's HR department eventually issued a report that largely found in favor
11 of Staben and against Plaintiff. The report did find Staben lacked in emotional
12 intelligence and recommended training on emotional maturity. Plaintiff has reason
13 to believe that Staben was never required to undergo any training as a result of the
14 HR findings.
15

16
17 39. Despite the fact that it was the malfeasance of McCullough and the SPD senior
18 staff that led to Plaintiff's report, Cpl. McCullough has been identified as a
19 "victim" of the Plaintiff in a memo from Staben. The evidence clearly showed
20 McCullough had sufficient discrepancies in his report to warrant a PID letter;
21 however, it was Plaintiff who was issued the PID letter in response to his reports
22 of the misconduct and removed from his position. McCullough, although also
23 issued a PID letter, has been allowed to continue working specialty positions that
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1 provide augmented work hours, overtime opportunities and career advancement.
2 Despite Plaintiff's allegations and the findings of the HR report, Staben continues
3 to operate in a supervisory role with no negative repercussions. Plaintiff has been
4 assigned to a precinct with limited/restricted duties and virtually no opportunities
5 for overtime. Plaintiff has been foreclosed from nearly every opportunity for
6 career advancement. Plaintiff has also been prevented from working with the
7 ATF. Plaintiff is being treated unequally from McCullough with no rational basis
8 to support the difference.
9

10
11 40. The mishandling of the internal investigations and the human resources
12 investigation, the persistent interference by Staben and others, and the unequal
13 treatment of Plaintiff have all caused extreme stress and destroyed an otherwise
14 good working relationship between Plaintiff and many, if not all, of his former
15 coworkers. The retaliatory interference by the police administration in the HR
16 investigation and with the prosecutor's office have caused Plaintiff to be denied
17 opportunities for advancement and all of the above have contributed to Plaintiff's
18 health issues. These stressors as well as unrelated health problems resulted in
19 Plaintiff taking a medical leave for approximately eleven months.
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23 41. After returning from leave, Plaintiff was transferred to the North Precinct and was
24 told that his duties would include screening cases, distributing stickers for the scat
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1 program and conducting background investigations for perspective senior
2 volunteers at the precinct. Plaintiff was also assigned an office in the reception
3 area of the precinct. The office was located in area where DOC offenders would
4 report to their probation officers. The office was previously occupied by a patrol
5 officer that had been identified as a Brady officer. That officer had retired just
6 prior to Plaintiff returning to duty. The office was across a narrow hallway from
7 a room where the DOC offenders would supply urine samples. This placement
8 was clearly retaliatory. After discussion with his Sergeant and Lieutenant, it was
9 decided that Plaintiff would share an office with his former partner, Detective
10 Thieschafer.
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14 42. On August 14, 2019, Plaintiff was directed to report to the Academy for remedial
15 training. There had been an email between Captain Griffiths and Lieutenant
16 McNabb outlining a policy that stated when an employee is gone on leave for
17 more than 6 months, that employee must report to the Academy for training. The
18 training is supposed to be designed to specifically address the employee's new
19 duty assignment. The training given to Plaintiff was limited to qualifying on a
20 PPC course with a handgun and reading policy. The training had no relative
21 connection to Plaintiff's new assignment.
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CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

42 USC § 1983 – Fourteenth Amendment

Count One: Violation of Plaintiff's Procedural

and Substantive Due Process Rights

(All Defendants)

43. Plaintiff re-alleges all paragraphs previously alleged.

44. By and through the actions and omissions described above, Defendants deprived, and conspired with one another to deprive Plaintiff of his Fourteenth Amendment rights preventing deprivation of his constitutionally protected rights without due process of law, causing him harm.

45. Except as otherwise alleged herein, all Defendants acted under color of law at all times material.

46. Plaintiff has a property interest in his job, as he has a legitimate entitlement to continued employment with his public employer, as well as fair and equal access to overtime and promotional and training opportunities. This claim to entitlement arises out of the SPD's promises of specific treatment in specific circumstances, including disciplinary action implemented upon existence of just cause, made in

1 City and Department disciplinary policies, the *Brady* best practice policy and the
2 collective bargaining agreement.

3
4 47. Defendants failed to provide adequate notice and opportunity to be heard
5 regarding his termination and his *Brady* listing. The listing effectively blacklisted
6 Plaintiff and continues to affect him to this day. The investigation against Plaintiff
7 was so flawed that it deprived him of due process.
8

9 48. Defendants then deprived Plaintiff of his constitutionally protected interests
10 without due process of law when they forced him out of the TCU, deprived him
11 of overtime pay (an “economic sanction”), drastically changed his work duties
12 and shift assignments, curtailing or eliminating training opportunities, and
13 effectively ended his employability as a police officer and his ability to transfer
14 laterally to a different department, thereby directly impacting his interest in
15 pursuing law enforcement as a profession elsewhere. Defendants continue to
16 deprive Plaintiff of these interests without due process to this day.
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19
20 49. As a direct and proximate result of the acts and omissions of Defendants
21 complained of herein, Plaintiff has suffered, and continues to suffer, economic
22 damages including lost overtime work, lost training and promotion opportunities,
23 advancement, and disqualification from testifying in the course of his
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1 employment. Such injuries are permanent and continuing, and capable of being
2 determined at trial.

3
4 50. As a further direct and proximate result of the acts and omissions complained of
5 herein, Plaintiff has suffered, and continues to suffer, mental pain and suffering,
6 humiliation, worry, anxiety, fear, loss of earning capacity, and loss of personal
7 and professional reputation, entitling him to an award of compensatory non-
8 economic damages in an amount to be determined at trial.

9
10 51. Plaintiff seeks injunctive and declaratory relief in the form of an order that he be
11 immediately reinstated in his prior position with full pay and that he be
12 immediately removed from the *Brady* list. Plaintiff also seeks compensatory
13 damages against Defendants including any unpaid back-pay, overtime pay, as well
14 as compensatory damages for pain and suffering including mental anguish, loss
15 of self-esteem, dignity and standing in the community.

16
17 52. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is
18 entitled to attorney fees, expert witness costs, litigation costs, and prejudgment
19 interest.

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22 **Count Two: Violation of Plaintiff's Right to Equal Protection**

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24 **(All Defendants)**

25 53. Plaintiff re-alleges all paragraphs previously alleged.

1 54.SPD has a policy prohibiting untruthfulness in the performance of official duties.

2 Plaintiff was investigated and wrongfully punished for an alleged violation of this
3 policy. The basis for this punishment was the investigation and report completed
4 by the SPD and ratified by Lundgren and Meidl.
5

6 55.McCullough's inaccurate report was not fully investigated, but Plaintiff has cause
7 to believe the report and CAD unit history taken together, constitute dishonesty
8 under the SPD policy. Furthermore, Plaintiff has reason to believe McCullough
9 was dishonest in his statements during the investigation. Finally, Plaintiff has
10 reason to believe if the investigation into McCullough were properly carried out,
11
12
13 McCullough would have been found to have been dishonest.

14 56.On information and belief, McCullough has not been investigated or punished for
15 his dishonesty. McCullough has not been subject to any employer discipline, nor
16 has he been reported to SCPO for untruthfulness, nor has he been included on the
17 *Brady* list of dishonest law enforcement officers.
18

19 57.Plaintiff was subjected to unequal treatment to McCullough without rational basis.
20

21 58.The Defendants actions violated the Equal Protection Clause of the Fourteenth
22 Amendment.
23

24 59.As a further direct and proximate result of the acts and omissions complained of
25 herein, Plaintiff has suffered, and continues to suffer, mental pain and suffering,
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1 humiliation, worry, anxiety, fear, loss of earning capacity, and loss of personal
2 and professional reputation, entitling him to an award of compensatory non-
3 economic damages in an amount to be determined at trial.
4

5 60. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is
6 entitled to attorney fees, expert witness costs, litigation costs, and prejudgment
7 interest.
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9 **SECOND CLAIM FOR RELIEF**

10 **42 USC § 1983 – First Amendment**

11 **Violation of Right to Free Speech – Public Employee**

12 **(All Defendants)**

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14 61. Plaintiff re-alleges all paragraphs previously alleged.

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16 62. Plaintiff's referral of McCullough's potential misconduct was protected under the
17 1st and 14th Amendments to the Constitution.

18 63. Police misconduct, particularly dishonesty, is a matter of public concern.

19
20 64. Plaintiff's acts described herein were the sole motivating factors for one or more
21 of the following retaliatory actions: the referral of Plaintiff to IA for investigation,
22 the Defendants making Plaintiff the center of the IA investigations, the merging
23 of the IA investigations, the referral to the SCPO for impeachment disclosure, the
24 removal of work assignments and opportunities, the manner in which the IA was
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1 conducted, the manner in which the HR investigation was conducted, the selective
2 nature of the witnesses called for both the IA and the HR investigations, the
3 imposition of discipline on Plaintiff, the inclusion of Plaintiff on the *Brady* list,
4 the refusal to adjust the discipline by the SPD, and the refusal to remove Plaintiff
5 from the PID.
6

7
8 65.Except as otherwise noted herein all Defendants were acting under color of law
9 and in their official capacities at all times material.

10 66.There was no independent justification for the retaliatory acts taken by Defendants
11 against Plaintiff.
12

13 67.As a result of the above-described actions, Plaintiff has suffered damages totaling
14 at least \$2 million, including lost wages and benefits, lost economic potential,
15 harm to reputation, emotional distress, and incurrence of attorney fees and other
16 costs.
17

18 68.Plaintiff has incurred attorney's fee and costs in pursuing this claim.
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20 **THIRD CLAIM FOR RELIEF**

21 **Outrage**

22 **(All Defendants)**

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24 69.Plaintiff re-alleges all paragraphs previously alleged.

25 70.The Defendants' actions alleged herein were extreme and outrageous conduct.
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1 71.The Defendants acted intentionally or recklessly in a manner that caused Plaintiff
2 severe emotional distress.

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4 72.The Defendants’ acts of investigating and labeling a law enforcement officer as a
5 liar, despite clear evidence collectively consists of an extraordinary transgression
6 of the bounds of socially tolerable conduct that is extreme and outrageous. The
7 application of the label “liar” in an ordinary social context is severely damaging
8 to any private member of the community. To so label, publicly, a law enforcement
9 officer is outrageous in the extreme. Law enforcement officers are expected to
10 perform a highly dangerous and stressful job and are held to high standards of
11 honesty. All the credible evidence here would indicate that Plaintiff met or
12 exceeded that high standard. The application of the label “liar” and the continued
13 and intentional refusal to remedy the situation, has caused severe mental and
14 emotional anguish.
15
16
17

18 73.Plaintiff seeks injunctive and declaratory relief in the form of an order that he be
19 immediately removed from the *Brady* list. Plaintiff further seeks an order that the
20 Defendants shall contact all parties in receipt of information regarding his
21 inclusion on the *Brady* list and inform them that he was never to have been
22 included in the first place. Plaintiff also seeks compensatory damages in an
23 amount to be proven at trial for the infliction of severe mental and emotional
24
25
26

1 trauma. Plaintiff further prays for an order awarding punitive damages due to the
2 particularly aggravated disregard of the Plaintiff's rights.
3

4 **FOURTH CLAIM FOR RELIEF**

5 **Defamation**

6 **(All Defendants)**

7
8 74. Plaintiff re-alleges all previously alleged paragraphs.

9 75. Defendants made statements in the form of the IA investigation, memos and
10 reports, letters, emails, and public comments in which they labeled Plaintiff as
11 untruthful.
12

13 76. These statements were untrue, defamatory, intended to subject Plaintiff to ridicule,
14 and diminish the respect and confidence in which Plaintiff is held by his employer,
15 the City, and the public. These statements have the potential to cause damage to
16 Plaintiff's profession up to, and including, termination and revocation of his law
17 enforcement certification.
18

19 77. Moreover, Plaintiff's inclusion on the *Brady* list means that the false statement
20 labeling him as untruthful has been published to every defense attorney who had
21 a case in the county involving Plaintiff. This has already caused Plaintiff to be
22 named as a defendant in one tort claim filed with the City and County of Spokane.
23
24

25 78. Defendants knew the statements were false and acted maliciously or recklessly,
26

1 or in bad faith.

2 79. Defendants' statements were defamatory *per se*. As a direct and proximate result
3 of Defendant's defamatory statements, Plaintiff has suffered economic and non-
4 economic damages.
5

6 **REQUEST FOR RELIEF**

7
8 WHEREFORE, Plaintiff requests judgment in favor of Plaintiff and against
9 Defendants, as follows:

- 10 1. On each and every one of Plaintiff's claims against Defendants, for economic
11 damages in a sum to be determined at the time of trial;
12
13 2. On each and every one of Plaintiff's claims against Defendants, for non-
14 economic damages in a sum to be determined at the time of trial;
15
16 3. A judicial declaration that Defendants' actions violated Plaintiff's
17 constitutional rights, as alleged above;
18
19 4. A mandatory injunction ordering Defendants to remove Plaintiff from the
20 *Brady* List, taking such steps as are reasonably necessary to remedy the
21 ongoing economic harm;
22
23 5. A mandatory injunction ordering Defendants to reinstate Plaintiff in his
24 position prior to discipline;
25
26

- 1 6. An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988 and other
- 2 applicable law;
- 3
- 4 7. An award of pre-judgment interest on all liquidated amounts awarded;
- 5
- 6 8. An award of post-judgment interest from the date of judgment to the date of
- 7 payment of that judgment amount;
- 8
- 9 9. A post-trial award of an amount sufficient to offset any adverse tax
- 10 consequences resulting from payment of the judgment;
- 11
- 12 10. Punitive damages for the aggravated defamation and outrageous conduct
- 13 causing severe emotional distress; and
- 14
- 15 11. Any other legal or equitable relief this court deems just and proper. DATED
- 16 this October 29, 2019.

16 THENELL LAW GROUP, P.C.

17
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